IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DAWN THOMPSON, on behalf of herself and all others similarly situated,	
Plaintiff,	**Civil Action No. 05-11169-DPW**
v.	
WYETH, INC., et al.	
Defendants.	

DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants Wyeth, Inc. a/k/a Wyeth Company f/k/a American Home Products Corporation; Pfizer Inc.; Warner-Lambert Company LLC, improperly named as Warner-Lambert Company, on behalf of itself and its unincorporated Parke-Davis division; McNeil-PPC, Inc.; Prestige Brands, Inc.; and The Procter & Gamble Distributing Company hereby respectfully move the Court to dismiss the Class Action Complaint in the above-captioned matter, and pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, defendant Novartis Corporation[1] hereby respectfully moves the Court for judgment on the pleadings with respect to the Complaint. In support of this motion, Defendants file a joint memorandum of law simultaneously herewith.

Plaintiff filed this putative class action lawsuit against various entities alleged to manufacture nonprescription pediatric cough suppressants containing the active ingredient

[1] Novartis Corporation answered plaintiff's Complaint on July 7, 2005.

dextromethorphan. Plaintiff seeks economic damages to recover amounts allegedly expended on these products on the grounds that the products are ineffective and that Defendants, by allegedly representing the products as effective, have defrauded Plaintiff and others similarly situated.

By this motion, Defendants ask this Court to dismiss Plaintiff's one-count common law fraud complaint as preempted by federal law. The United States Food and Drug Administration ("FDA") has specifically found – by regulation – that the products challenged by Plaintiff are safe and effective for pediatric use, and has established detailed requirements for their labeling and marketing. Plaintiff's attempt to overturn and supplant FDA's requirements through this state law action is expressly prohibited by section 751 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 379r. Even without express statutory preemption, Plaintiff's claim is in direct conflict with governing FDA requirements and therefore is barred under the doctrine of implied preemption.

WHEREFORE, and for the reasons set forth in Defendants' accompanying joint memorandum of law in support of their motion to dismiss, Plaintiff's action fails as a matter of law and should be dismissed with prejudice.

REQUEST FOR ORAL ARUGMENT

Defendants respectfully request that the Court hear oral argument on this motion.

LOCAL RULE 7.1(A)(2) CERTIFICATION

Counsel for Defendants have conferred with counsel for Plaintiff pursuant to Local Rule 7.1(A)(2) but have been unable to reach agreement on the issues raised by this Motion.

Respectfully submitted,

WYETH, INC., a/k/a Wyeth Company f/k/a American Home Products Corporation

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document was served upon all counsel of record by electronic service on July 27, 2005.

/s/ John E. Hall
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